

## CONTEMPT CASES

1. Green v. Green - 900 N.E.2d 825 (1/12/09) unpublished Court of Appeals

Decree vested title to marital residence with the Husband who was to pay mortgage. The Decree did not contain hold harmless provision or require him to refinance.

The Court of Appeals ruled that because the Husband's "duty to repay the mortgage loan constitutes a part of the division of property rather than a direct order to pay a fixed sum to Bobbi Bobbie may enforce the court's order through an action for contempt." Citing Phillips, Mitchell & Pawson.

2. Bailey v. Mann - 895 N.E.2d 1215 (10/29/08)

Indiana Supreme Court reversed trial Court and Court of Appeals. Decree required wife to pay a joint debt, but did not require refinancing. Husband filed petition for contempt. Court ruled that there was no order to refinance and found no contempt.

3. Phillips v. Delks - 880 N.E. 2d 713 (Ind. App. 2/13/08)

Contempt allowed. \$25,000 damage award reversed because no evidence to support amount. Monetary damages are allowed as remedy for contempt.

4. Mitchell v. Mitchell - 871 N.E. 2d 390 (Ind. App. 8/8/07)

Trial court followed Merritt which said property settlement agreements could not be enforced by contempt. In Merritt, former husband's debt to pay mortgage was discharged in his bankruptcy, so contempt improper.

Ruling: If a final money judgment which requires one to pay a fixed sum of money to the other is entered, contempt is not proper - use T.R. 69 pro supp. But in the absence of a money judgment, contempt is available remedy - see I.C. §31-15-7-10(1). Ex-husband found in contempt for failure to hold wife harmless from payment of mortgage and credit cards.

5. Staresnick v. Staresnick - 830 N.E. 2d 127 (Ind. App. 7/12/05)

Father not in contempt because order was ambiguous.

6. Dawson v. Dawson - 800 N.E. 2d 1000 (Ind. App. 12/31/03)

BANKRUPTCY FILED - PRE BAPCPA

Ex-husband obligated to pay or refinance 2<sup>nd</sup> mortgage. He filed bankruptcy. Court found he had failed to perform an obligation and 90 day jail was affirmed.

7. Mosser v. Mosser - 729 N.E. 2d 197 (Ind. App. 5/26/2000)

Husband found in contempt for failure to pay attorney fees due from provisional order.

Distinction: provisional order not a final judgment for payment of sum (which requires enforcement by T.R. 69) and therefore contempt appropriate. Court ordered additional attorney fees for enforcing contempt.

8. Merritt v. Merritt - 693 N.E. 2d 1320 (Ind. App. 1998)

BANKRUPTCY FILED - PRE BAPCPA

Wife received house and to pay 1<sup>st</sup> mortgage. Husband to pay 2<sup>nd</sup> mortgage and hold her harmless. Husband filed Chapter 7. Court ruled that mortgage debt and hold harmless debt were discharged and contempt not appropriate.

9. Howard v. Moore - 580 N.E. 2d 999 (Ind. App. 1991)

BANKRUPTCY FILED - PRE BAPCPA

Husband filed bankruptcy. Wife filed action in divorce court for determination of dischargeability. Court looked at whether debt obligations in the nature of support or maintenance or property settlement. Debt called “alimony/maintenance”, but Husband argued it really was division of property. Court ruled intent was not property division. Order to pay attorney fees were non-dischargeable if incurred in connection with support or alimony.

10. Coleman v. Coleman - 539 N.E. 2d 34 (Ind. App. 1989)

Husband ordered to pay property division of \$55,500 in 111 monthly installments of \$500 each. Can't be enforced by contempt.

11. Chapman v. Chapman - 512 N.E. 2d 414 (Ind. App. 1987)

Visitation expenses same as support and may be enforced by contempt.

12. Thompson v. Thompson - 458 N.E. 2d 298 (Ind. App. 1984)

Ex-husband to pay the mortgage and provide health insurance. Contempt proper to enforce.

Remedy: Court should have ordered husband to pay wife a fixed sum of money calculated to satisfy the support and maintenance arrearage and to compensate wife for any loss caused by his failure to buy insurance or pay the mortgage.